



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

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Mr. James Eidson
Criminal District Attorney
Taylor County Courthouse
300 Oak
Abilene, Texas 79602-1577

OR98-3307

Dear Mr. Eidson:

You ask whether an autopsy report ordered by a justice of the peace in a county without a medical examiner and made part of an inquest record is open to public inspection. Article 49.15 of the Code of Criminal Procedure governs the maintenance and disclosure of autopsy reports ordered by justices of the peace in counties without a medical examiner. Previously, we held that "autopsies made a part of an official inquest by a justice of the peace or made by a medical examiner as part of his determinations, are public records and are subject to examination by the public." Open Records Decision No. 21 (1974) (construing statutory predecessor to article 49.15 of Code of Criminal Procedure). The Seventieth Legislature amended article 49.15, and your position is that the provisions of article 49.15 "imply that the autopsy report, the inquest record, and the inquest summary report are not public records."

Initially, we note that the Texas Open Records Act, chapter 552 of the Government Code, does not apply to records of the judiciary. *See* Gov't Code § 552.003(1)(B). Because a justice of the peace is a member of the judiciary, records maintained by a justice of the peace are not subject to disclosure under the Open Records Act. *See* Tex. Const. art. V, § 1; Open Records Decision No. 25 (1974). We note, however, that section 27.004 of the Government Code gives "any interested party" the right to inspect records belonging to the office of any justice of the peace at reasonable times. We have interpreted this provision to give the general public the right to inspect records filed with a justice of the peace. Open Records Decision No. 25 (1974). *See also* Open Records Decision No. 521 (1989) (construing right of access granted to "any interested person" in article 49.18 of Code of Criminal Procedure). Additionally, we have recognized a citizen's common-law right to inspect public records, including judicial records. Attorney General Opinion DM-166 (1992), Open Records Decision No. 25 (1974). Thus, the issue before us is not whether an

autopsy report ordered by a justice of the peace in a county without a medical examiner is subject to disclosure under the Open Records Act, but whether the autopsy report is confidential under article 49.15 of the Code of Criminal Procedure, and therefore not subject to public inspection pursuant to section 27.004 of the Government Code and the common-law right to inspect records of the judiciary.

Subchapter A of chapter 49 of the Code of Criminal Procedure applies to an inquest into a death occurring in a county that does not have a medical examiner. Crim. Proc. Code art. 49.02. In a county without a medical examiner, the justice of the peace is charged with the duty of conducting inquests. Article 49.04 of the Code of Criminal Procedure authorizes a justice of the peace to conduct an inquest into the death of a person who dies in the county served by the justice. An inquest is defined as "an investigation into the cause and circumstances of the death of a person, and a determination, made with or without a formal court hearing, as to whether the death was caused by an unlawful act or omission." Crim. Proc. Code art. 49.01(2). Article 49.14 authorizes the justice to conduct an inquest hearing if circumstances warrant a hearing. An inquest hearing is defined as "a formal court hearing held to determine whether the death of a person was caused by an unlawful act or omission and, if the death was caused by an unlawful act or omission, to obtain evidence to form the basis of a criminal prosecution." Crim. Proc. Code art. 49.01(3). Article 49.10 authorizes the justice to direct the performance of an autopsy.

Article 49.15 of the Code of Criminal Procedure defines the duties of a justice with respect to creating and maintaining an inquest record. Article 49.15 provides:

(a) A justice of the peace or other person authorized under this subchapter to conduct an inquest shall make an inquest record for each inquest he conducts. The inquest record must include a report of the events, proceedings, findings, and conclusions of the inquest. The record must also include any autopsy prepared in the case and all other papers of the case. All papers of the inquest record must be marked with the case number and be clearly indexed and be maintained in the office of the justice of the peace and be made available to the appropriate officials upon request.

(b) As part of the inquest record, the justice of the peace shall make and keep complete and permanent records of all inquest hearings. The inquest hearing records must include:

- (1) the name of the deceased person or, if the person is unidentified, a description of the body;
- (2) the time, date, and place where the body was found;
- (3) the time, date, and place where the inquest was held;

- (4) the name of every witness who testified at the inquest;
 - (5) the name of every person who provided to the justice information pertinent to the inquest;
 - (6) the amount of bail set for each witness and person charged in the death;
 - (7) a transcript of the testimony given by each witness at the inquest hearing;
 - (8) the autopsy report, if an autopsy was performed; and
 - (9) the name of every person arrested as a suspect in the death who appeared at the inquest and the details of that person's arrest.
- (c) The commissioners court shall pay a reasonable fee to a person who records or transcribes sworn testimony during an inquest hearing.
- (d) The justice of the peace shall certify a copy of the inquest summary report and deliver the certified copy in a sealed envelope to the clerk of the district court. The clerk of the district court shall retain the summary report subject to an order by the district court.

In addressing the question of whether article 49.15 makes the inquest record, including the autopsy report, confidential, we begin by noting the distinction between the inquest record and the inquest summary report. The inquest record must include: (1) a report of the events, proceedings, findings, and conclusions of the inquest, (2) any autopsy prepared in the case and all other papers of the case, and (3) and complete records of the inquest hearing, if a hearing was held. Crim. Proc. Code art. 49.15(a), (b). The inquest record is to be maintained in the office of the justice of the peace and be made available to the appropriate officials upon request. Crim. Proc. Code art. 49.15(a). On the other hand, the required contents of the inquest summary report are not enumerated. Article 49.15(d) directs the justice of the peace to certify a copy of the inquest summary report and deliver the certified copy to the clerk of the district court in a sealed envelope. Article 49.15(d) further states that the clerk of the district court shall retain the summary report subject to an order by the district court. We conclude that the language of article 49.15(d) makes the inquest summary report confidential and subject to inspection only by order of the district court. *Cf.* Open Records Decision No. 495 (1988) (concluding similar language in Texas Open Meetings Act makes certified agenda or tape recording of closed meeting confidential). However, this confidentiality does not extend to the inquest record which must "be made available to the appropriate officials upon request." Crim. Proc. Code art. 49.15(a).

Finally, we consider whether the part of article 49.15(a) which states the inquest record must "be made available to the appropriate officials upon request" means that the inquest record, including the autopsy report, is confidential and subject to inspection only by "appropriate officials." The plain language of article 49.15(d) gives appropriate officials access to inquest records, but does not constitute an explicit grant of confidentiality with regard to all other persons. Cf. Open Records Decision No. 478 at 2-3 (1987) (finding that statute giving individual right of access did not constitute grant of confidentiality with regard to all other persons).

On the other hand, the legislature has with clear intent made records of justices of the peace open to public inspection. Gov't Code § 27.004. Furthermore, in counties that have a medical examiner, the legislature has explicitly deemed autopsy reports maintained by the medical examiner pursuant to article 49.25 of the Code of Criminal Procedure open to public inspection. Crim. Proc. Code art. 49.25, § 11; Open Records Decision Nos. 529 (1989), 521 at 7 (1989), 21 (1974). If we conclude that the language of article 49.15(a) makes inquest records, including autopsy reports, confidential, it would lead to the absurd result that autopsy reports maintained by justices of the peace pursuant to article 49.15 would be confidential and closed to public inspection, while autopsy reports maintained by medical examiners pursuant to article 49.25 are open to public inspection. When interpreting a statute, we must avoid a construction that leads to absurd consequences. *C&H Nationwide, Inc. v. Thompson*, 903 S.W.2d 315 (Tex. 1994); *Boykin v. State*, 818 S.W.2d 782 (Tex. Crim. App. 1991). In order to avoid an absurd result, we conclude that article 49.15 does not make inquest records confidential. Thus, inquest records maintained under article 49.15, including autopsy reports, are open to public inspection pursuant to section 27.004 of the Government Code and the common-law right to inspect records of the judiciary.

To summarize, article 49.15(d) of the Code of Criminal Procedure deems an inquest summary report confidential and subject to inspection only by order of the district court. Article 49.15(a) of the Code of Criminal Procedure does not make an inquest record confidential, and therefore, an inquest record, including an autopsy report, is open to public inspection pursuant to section 27.004 of the Government Code and the common-law right to inspect records of the judiciary.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have any questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings
Assistant Attorney General
Open Records Division

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Ref: ID# 109904 (ORQ-25)

cc: Mr. Michael Bukiewicz
Assistant County Attorney
Webb County
P.O. Box 420268
Laredo, Texas 78042-0268

Ms. Eileen C. Begle
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

Ms. Marva M. Gay
Assistant County Attorney
Harris County
1001 Preston, Suite 634
Houston, Texas 77002-1891

Mr. John Julian Moore
Colorado County Attorney
400 Spring Street, 2nd Floor West
Columbus, Texas 78934